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October 10, 1996

VIA FACSIMILEMr. Steven M. Marks, Esq.  
Arnold & Porter  
555 12th Street, N.W.  
Washington, D.C. 20004Re: Docket No. 96-5 CARP-DSTRA

Dear Mr. Marks:

Pursuant to Section 251.45(b) of the rules of the Copyright Office, 37 C.F.R. § 245(b), Muzak, L.P. hereby objects and responds to the request for documents related to the testimony of Bruce B. Funkhouser ("Request") of the Recording Industry Association of America ("RIAA"), as follows:

GENERAL OBJECTIONS AND CONDITIONS

A. Muzak objects to each Request to the extent it calls for any documents that contain information protected from disclosure by the attorney-client privilege or that contain or constitute attorney work product or that are otherwise protected from disclosure. Inadvertent production of any document which is confidential or which contains confidential information or is privileged, or was prepared in anticipation of litigation or for this proceeding shall not constitute a waiver of any privilege or of any other ground for objection to discovery with respect to such document, the information contained therein, or the subject matter thereof, or of Muzak's right to object to the use of such document or the information contained therein during the Copyright Arbitration Royalty Proceeding.

B. Muzak objects to the Request to the extent it may be construed to seek the production of documents in the possession, custody or control of Muzak. In particular, Muzak

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objects to the production of documents in the public domain of which Muzak is currently unaware. Such documents can be located and obtained by the RIAA as easily as by Muzak. Muzak reserves the right to introduce documents in support of its direct case that are in the public domain.

C. Muzak objects to producing any documents previously submitted as part of their respective Direct Cases, and hereby incorporates those documents into its subsequent productions.

D. Muzak submits these responses without conceding the relevancy or materiality of the materials sought to be produced or their subject matter. Muzak reserves any and all objections as to relevance and materiality. Muzak's responses, and any identification of documents included in those responses, are not intended to waive or prejudice any objections Muzak may have or may assert later.

E. Muzak objects to each Request to the extent it is not limited in time. Without waiving this objection, Muzak will produce documents currently in its possession, custody or control.

F. Muzak objects to each Request to the extent it purports to impose obligations on Muzak in excess of those specified in the statutory and regulatory provisions governing the production of documents in this Copyright Arbitration Royalty Proceeding.

G. Muzak objects to these Requests on grounds the words "supporting" and "relied upon" are so vague and ambiguous that they fail to accord Muzak readily ascertainable and certain standards by which to respond. Muzak further objects to the use of these terms on the ground that they are overly broad in their breadth and scope and call for documents which are not relevant to this action or reasonably calculated to lead to the discovery of admissible evidence. Accordingly, Muzak will make, where practicable, a good faith attempt to determine whether documents within its possession, custody, or control "support" the cited proposition or are "relied upon" in making the cited proposition, and will produce such documents.

H. Muzak objects to each Request to the extent it calls for a conclusion of law on the grounds that such information is not a proper subject of discovery.

I. Muzak expressly reserves the right to supplement and amend its responses to these discovery requests based on additional information and documents that may be produced by other parties or subsequently discovered documents in the public domain.

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### SPECIFIC RESPONSES AND OBJECTIONS

In addition to the foregoing objections and conditions of production, which apply to each document request as if set forth fully below, Muzak makes the following specific responses and objections:

Request 1: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control.

Request 2: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control.

Request 3: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control.

Request 4: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control.

Request 5: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control.

Request 6: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control. Additional documents in the public domain or in the possession, custody or control of other parties to this proceeding may exist that are also responsive to this request.

Request 7: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control. Additional documents in the public domain or in the possession, custody or control of other parties to this proceeding may exist that are also responsive to this request.

Request 8: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control. Additional documents in the public domain or in the possession, custody or control of other parties to this proceeding may exist that are also responsive to this request.

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Request 9: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control. Additional documents in the public domain or in the possession, custody or control of other parties to this proceeding may exist that are also responsive to this request.

Request 10: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control. Additional documents in the public domain or in the possession, custody or control of other parties to this proceeding may exist that are also responsive to this request.

Request 11: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control.

Request 12: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control. Additional documents in the public domain or in the possession, custody or control of other parties to this proceeding may exist that are also responsive to this request.

Request 13: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control. Additional documents in the public domain or in the possession, custody or control of other parties to this proceeding may exist that are also responsive to this request.

Request 14: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control. Additional documents in the public domain or in the possession, custody or control of other parties to this proceeding may exist that are also responsive to this request.

Request 15: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control. Additional documents in the public domain or in the possession, custody or control of other parties to this proceeding may exist that are also responsive to this request.

Request 16: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control. Additional documents in the public domain or in the possession, custody or control of other parties to this proceeding may exist that are also responsive to this request.

Request 17: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or

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control. Additional documents in the public domain or in the possession, custody or control of other parties to this proceeding may exist that are also responsive to this request.

Request 18: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control. Additional documents in the public domain or in the possession, custody or control of other parties to this proceeding may exist that are also responsive to this request.

Request 19: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control.

Request 20: Subject to and without waiving any of the foregoing General Objections, Muzak will produce all responsive, non-privileged documents within its possession, custody or control. Additional documents in the public domain or in the possession, custody or control of other parties to this proceeding may exist that are also responsive to this request.

Please do not hesitate to call me if you have any questions about these Responses or the proceeding in general.

Very truly yours,

Jon L. Praed  
of LATHAM & WATKINS

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